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October 7, 2014

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6870

Dear Mr. Jordan,

RECEIVED
FEDERAL ELECTION
COMMISSION
2014 OCT -8 AM 11:49
OFFICE OF GENERAL
COUNSEL

This Response is submitted by the undersigned counsel on behalf of American Crossroads in response to the Complaint designated as Matter Under Review 6870.

The Complainant in this matter is American Democracy Legal Fund, "a new overtly partisan watchdog group" created by David Brock.¹ The Complainant alleges that "American Crossroads has republished video footage taken from U.S. Senate candidate Thom Tillis's campaign materials in its own ads in direct violation of the Federal Election Campaign Act and FEC regulations."² According to the Complainant, a certain advertisement produced and distributed by American Crossroads "is overwhelmingly comprised of video footage that was taken from campaign videos created and owned by the Thom Tillis Committee."³ The

¹ Kenneth P. Vogel, *Media Matters' David Brock expands empire*, Politico (Aug. 13, 2014), http://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003.html?m=po_r; see also Andrew Stiles, *The Clinton Empire Grows Larger by the Day*, Washington Free Beacon (Aug. 14, 2014), <http://freebeacon.com/blog/the-clinton-empire-grows-larger-by-the-day/> (referring to "Brock's stable of aggressive political attack outfits, such as Media Matters, American Bridge, and the recently announced American Independent Institute and American Democracy Legal Fund").

² Complaint at 1.

³ Complaint at ¶ 4.

Complainant alleges that the use of this footage violates the FEC's republication regulations and yields an impermissible in-kind contribution from American Crossroads to the Tillis campaign.

As explained in more detail below, this Complaint treads well-worn ground. In a series of similar enforcement matters, the Commission repeatedly declined to find a violation when confronted with materially indistinguishable facts in complaints lodged against the Democratic Congressional Campaign Committee (DCCC), House Majority PAC, and American Crossroads (in a separate matter). The same result is required here.

I. Factual Background: American Crossroads' Advertisement

On or about April 1, 2014, American Crossroads made expenditures to produce and distribute an advertisement titled "Guts." This advertisement was reported to the Commission as an independent expenditure.⁴ No portion of the costs of this advertisement were in any way an in-kind contribution to the Tillis campaign, either as a result of republication or through any other theory.

"Guts" is a 30-second advertisement that contains a total of between eight and nine seconds⁵ of so-called "B-roll" footage of North Carolina House Speaker Thom Tillis. This B-roll footage was obtained from a publicly-available video placed on YouTube, titled "Tillis Montage 2," that is available at <https://www.youtube.com/watch?v=cuiqFHAN7ZQ>. "Tillis Montage 2" consists of generic "background video footage" that "contains no discernible message."⁶ The eight to nine seconds of B-roll footage is incorporated into the 30-second American Crossroads advertisement, serves only as background imagery, and in no way supplants American Crossroads' "own message" which is conveyed through American Crossroads' "own text, graphics, audio, and narration."⁷

The American Crossroads advertisement also features footage of Speaker Tillis speaking at a podium. This footage was derived from public television (UNC.TV) footage of a January

⁴ See <http://docquery.fec.gov/pdf/213/14960572213/14960572213.pdf#navpanes=0>.

⁵ The American Crossroads advertisement incorporated a total of eight seconds and 28 frames of B-roll footage (meaning eight full seconds of footage, plus an additional 28 frames of footage). The total amount of B-roll footage incorporated into the American Crossroads advertisement was therefore between eight and nine seconds.

⁶ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 8.

⁷ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 6357 at 4.

29, 2013, press conference, which is available on YouTube at <https://www.youtube.com/watch?v=9y8XiekpwUM>.

The remaining video and graphics that appear in the advertisement were created by American Crossroads. All audio content was created by American Crossroads.

II. Legal Discussion

A. Overview

The independent use of a candidate's B-roll footage has become commonplace, and many candidates make such footage available to the public. For example, Speaker Tillis' opponent, Senator Kay Hagan, placed B-roll footage directly on her campaign webpage. This footage is titled "KH Broll Stringout" and can be downloaded at <http://www.kayhagan.com/video/>. The Southern Alliance For Clean Energy used parts of Senator Hagan's B-roll footage in a March 2014 advertisement titled, "NC Clean Air Champion Ad – Oil Billionaires Attacking Kay Hagan."⁸

Senator Al Franken,⁹ Senator Mark Begich,¹⁰ Senator Mark Pryor,¹¹ and Senator Mark Udall¹² also provide B-roll footage on their campaign websites. According to a *Huffington Post* report published in March, "[n]ine Senate candidates in this election have uploaded B-roll footage -- video clips with no narration -- to their websites and YouTube pages for other groups to download, and three more candidates have uploaded similar video with narration."¹³

⁸ See <http://www.cleanenergy.org/nc-ad-oil-billionaires-attacking-kay-hagan/>.

⁹ Official headshots and a video titled "broll" may be downloaded at <http://www.alfranken.com/media/>.

¹⁰ Video titled "Mark Begich's Home" may be downloaded at <http://www.markbegich.com/video/page/2/>. "Mark Begich's Home" is nearly four minutes of B-roll footage, and is the only video on Senator Begich's video pages that includes an option to "Download this Video in HD." Every other video is play-only.

¹¹ B-roll titled "Pryor Footage" is available at <http://pryorforsenate.com/videos/>.

¹² Two minutes of B-roll footage can be downloaded at <http://markudall.com/video/>.

¹³ Paul Blumenthal, *Senate Candidates Find A Way To Give Those Friendly Super PACs A Helping Hand*, The Huffington Post (Mar. 27, 2014), http://www.huffingtonpost.com/2014/03/27/2014-senate-super-pacs_n_5036277.html.

As former Chairman Lenhard recently wrote, "it is no surprise to election lawyers that this cycle will be filled with readily available footage of candidates with flags, firefighters, puppies and the candidate's adoring family."¹⁴ While the Commission has divided on the applicability of the Commission's republication regulations to a political committee's independent use of a small amount of a campaign's B-roll footage, at least four recently-decided matters (MURs 5879, 6357, 6617, and 6667) involving the issue have resulted in dismissals. These B-roll cases were preceded by two related cases involving the use of internet-sourced still photographs, which also resulted in dismissals.

B. Still Photograph Cases – MUR 5743 (Sutton) and MUR 5996 (Bee)

In MUR 5743 (Sutton), the respondent produced several mail pieces that incorporated photographs of a candidate that had been obtained from the candidate's website. In MUR 5996 (Bee), the respondent produced a television advertisement that included a two-second segment featuring a candidate's "head shot" photograph that was similarly obtained from the candidate's website. Both matters resulted in dismissals, although the reasoning in these cases was fractured and inconclusive.

In MUR 5743, the Office of General Counsel (OGC) suggested that the reproduction of the photographs at issue "may have" been an excessive in-kind contribution as a result of republication under the Act, claimed that the "excessive contribution violation is clear," and also concluded that "it is not clear that the photograph ... inserted into [the mailers] would have any more than *de minimis* value."¹⁵ The Commission voted 4-2 to dismiss the matter pursuant to *Heckler v. Chaney* and specifically declined to approve any finding that there was reason to believe a provision of the Act was violated. However, the Commission still included an admonishment to the respondent in the form an unspecific "reminder" of the requirements of the law.¹⁶ Two dissenting Commissioners issued a Statement of Reasons explaining that the use of the photographs in the mail pieces did not constitute republication of campaign materials under the Act and that no admonishment should have been issued.¹⁷

¹⁴ Robert Lenhard, *Super PACs Using Candidates' B-roll Footage and the FEC's "Own Message" Cases*, InsidePoliticalLaw.com (Mar. 19, 2014), <http://www.insidepoliticallaw.com/2014/03/19/super-pacs-using-candidates-b-roll-footage-and-the-fecs-own-message-cases/>.

¹⁵ First General Counsel's Report in MUR 5743 (Sutton) at 8.

¹⁶ MUR 5743, Amended Certification, Dec. 5, 2006; Commission Letter of Jan. 22, 2007.

¹⁷ See Statement of Reasons of Commissioners Hans A. von Spakovsky and Ellen L. Weintraub in MUR 5743 (Sutton).

In MUR 5996, according to the Factual and Legal Analysis, "[t]he Commission was unable to agree on whether the use of the 'head shot' in this matter constituted republication; however, because the 'head shot' photo was publicly available for download at no charge from the campaign's website and was a small portion of the television advertisement at issue, the Commission voted to exercise its prosecutorial discretion and dismiss the allegation that [respondent] made an excessive or prohibited contribution...."¹⁸ Three Commissioners issued a Statement of Reasons explaining their view that the use of the photograph did *not* constitute republication, and adopted the rationale of the two dissenting Commissioners in MUR 5743.¹⁹ No Statement of Reasons was issued by the other three Commissioners, although these three Commissioners later indicated that the complaints in MURs 5743 and 5996 were dismissed because those matters "involved only the incidental use of campaign material," and regardless of whether such use is treated as republication, there is no "excessive or prohibited contribution because any republication was *de minimis* in value."²⁰

C. MUR 5879 (Democratic Congressional Campaign Committee)

MUR 5879 (Democratic Congressional Campaign Committee), a case dating to 2006 but not decided until 2009, involved allegations that the DCCC aired an advertisement that incorporated video that originated from a campaign committee. The DCCC first requested footage directly from Harry Mitchell for Congress, and subsequently "[t]he Mitchell Committee's media vendor then apparently sent to the DCCC footage of the candidate that it had on hand."²¹ According to OGC's findings, "the Mitchell Committee provided the DCCC with a copy of the raw video footage used in" a Mitchell campaign advertisement "via the Mitchell Committee's media vendor."²² This footage was also uploaded by the Mitchell campaign "to an internet server, making it available for download to the general public."²³ The footage used by the DCCC in its own advertisement consisted of "audio-free clips of Mitchell talking to people at

¹⁸ MUR 5996 (Bee), Factual and Legal Analysis at 9.

¹⁹ See Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn in MUR 5996 (Bee) at 2-3.

²⁰ See Statement of Reasons of Vice Chair Ellen L. Weintraub and Commissioners Cynthia L. Bauerly and Steven T. Walther in MUR 6357 (American Crossroads) at 4 n.9.

²¹ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 2.

²² MUR 5879, General Counsel's Report #2 at 4.

²³ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 3.

a park and meeting with seniors” – i.e., B-roll footage. “The video footage at issue ... comprised approximately fifty percent (50%) of the DCCC’s television advertisement.”²⁴

Three Commissioners voted against finding a violation under these facts and explained that:

[T]he DCCC’s advertisement was an expression of its own message. The fact that it excerpted fifteen seconds of B-roll images from three minutes of candidate footage did not result in the dissemination, distribution, or republication of campaign materials, nor did it otherwise convert the independent expenditure by the DCCC into an in-kind contribution. Consistent with prior Commission precedents and interpretations regarding republication, we voted to reject OGC’s recommendation to enter into pre-probable case conciliation with the DCCC prior to finding probable cause.²⁵

The same Commissioners noted “the Commission’s longstanding approach that wholesale copying of candidate materials constitutes republication, but partial use of such materials in connection with one’s own protected speech is not legally problematic.”²⁶ “The [DCCC’s] ad clearly did not fit within the traditional view of republication as ‘the reprinting and dissemination of a candidate’s mailers, brochures, yard signs, billboards, or posters – in other words, materials that copy and convey a campaign’s message. Instead, it constituted an expression of the sponsor’s own views.”²⁷ This conclusion was based, in part, on legislative history presented by the respondents that indicates that the underlying purpose of the republication provision is to “distinguish[] between independent expressions of an individual’s views and the use of an individual’s resources to aid a candidate in a manner indistinguishable in substance from the direct payment of cash to a candidate.”²⁸

²⁴ MUR 5879, General Counsel’s Report #2 at 1-2.

²⁵ *Id.* at 4.

²⁶ *Id.* at 5; *see also* Statement of Reasons of Commissioners Hans A. von Spakovsky and Ellen L. Weintraub in MUR 5743 (Sutton) at 4-5 (“The downloading of a photograph from a candidate’s website that is open to the world, for incidental use in a larger mailer that is designed, created, and paid for by a political committee as an independent expenditure without any coordination with the candidate, does not constitute the ‘dissemination, distribution, or republication of candidate campaign materials.’”).

²⁷ *Id.* at 7-8; *see also* Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn in MUR 5996 (Tim Bee) at 3 (“The traditional type of republication involves the reprinting and dissemination of a candidate’s mailers, brochures, yard signs, billboards, or posters – in other words, materials that copy and convey a campaign’s message.”).

²⁸ *Id.* at 4 *quoting* H.R. Conf. Rep. 94-1057, 59, 1976 U.S.C.A.N. 946, 974 (1976).

In other words, the relevant question in these cases is whether incorporating generic, B-roll footage that is free of the candidate's own messaging and content into an independent communication is "indistinguishable in substance from the direct payment of cash to a candidate."

D. MUR 6357 (American Crossroads)

The same three Commissioners reached the same conclusions in MUR 6357 (American Crossroads). In that matter, the respondents incorporated into their own advertisement "unembellished footage of Rob Portman and his family on the campaign trail" that was made available in a YouTube video titled, "Portmans Celebrate Memorial Day."²⁹ As the Commissioners noted, the American Crossroads advertisement:

[C]onsist[ed] of numerous fleeting images – including several brief snippets of Portman Committee video footage – that are incorporated into a checkerboard-style graphic and set alongside text, images, and visuals that are unique to this advertisement. Moreover, American Crossroads adds its own audio and narration to this spot.³⁰

As in MUR 5879, the Commissioners concluded that "[t]he activity at issue here does not constitute 'republishing of campaign materials' as contemplated by the Act and Commission regulations."³¹ Instead, "the generic Portman footage is shown only in a portion of the American Crossroads advertisement, which does not repeat the entirety, or even any substantial portion, of the Portman Committee footage," and "the few fleeting images from the Portman Committee footage are incorporated into a communication in which American Crossroads adds its own text, graphics, audio, and narration to create its own message."³²

The Commissioners further explained:

The Act's republication provision is designed to capture situations where third parties, in essence, subsidize a candidate's campaign by expanding the

²⁹ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 6357 at 2.

³⁰ *Id.*

³¹ *Id.* at 3.

³² *Id.* at 4.

distribution of communications whose content, format, and overall message are devised by the candidate. But clearly that is not what happened here. American Crossroads did not repeat verbatim the Portman Committee's message; rather, it created its own. Therefore, we concluded that the American Crossroads advertisement did not constitute "a republication of campaign materials."³³

E. MUR 6617 (Vilsack) and MUR 6667 (Bustos)

In MUR 6617, the American Federation of State, County & Municipal Employees, AFL-CIO (AFSCME) and the House Majority PAC were accused of using video footage that was filmed and made publicly available by Christie Vilsack for Iowa. AFSCME and House Majority PAC aired identical ads that included "approximately 11 to 12 seconds of the 33-second ads," in three "separate interspersed segments" as "background imagery."³⁴

In MUR 6667, the "House Majority PAC aired an ad that contained video footage created by" Friends of Cheri Bustos.³⁵ The footage used by House Majority PAC came from two minutes and thirty-eight seconds of B-roll footage posted to YouTube by the Bustos campaign.³⁶ The House Majority PAC ad was 33-seconds in length and included approximately 11 seconds of B-roll footage.

The Commission voted 2-2 on the Office of General Counsel's recommendation in each matter to find reason to believe a violation occurred in the form of an impermissible in-kind contribution based upon a republication theory. The two Commissioners who voted to dismiss both cases found the matters "present[ed] materially indistinguishable facts from those in MUR 6357 (American Crossroads)."³⁷ In their view, both "matters involv[ed] respondents that created and paid for advertisements that incorporated as background footage brief segments of YouTube videos posted by authorized committees of federal candidates" in which the respondents "add[ed] their] own text, graphics, audio, and narration to create [their] own message."³⁸

³³ *Id.*

³⁴ MUR 6617 (Vilsack), First General Counsel's Report at 4.

³⁵ MUR 6667 (Bustos), First General Counsel's Report at 2.

³⁶ *Id.* at 2-3.

³⁷ Statement of Reasons of Commissioners Caroline C. Hunter and Matthew S. Petersen at 1.

³⁸ *Id.* at 2.

III. Complainant's Allegations

A. "Tillis Montage 2"

The Complainant correctly observes that American Crossroads incorporated certain video footage derived from "Tillis Montage 2" into its own advertisement. As noted above, American Crossroads used between eight and nine seconds (eight seconds 28 frames) of footage from that video, and incorporated that material into its own 30-second advertisement. Contrary to Complainant's assertion, the American Crossroads advertisement is *not* "overwhelmingly comprised of video footage that was taken from campaign videos created and owned by the Thom Tillis Committee."³⁹ Rather, the "Tillis Montage 2" B-roll footage constitutes less than one-third of the total video content in the advertisement. Eight to nine seconds of a 30-second ad (which is approximately 28% of the advertising time) is significantly *less* than the amounts of B-roll footage at issue in MURs 6617 and 6667 (11-12 seconds of a 33-second ad, or approximately 35% of the total time of the advertisement), and MUR 5879 (approximately 50% of the total time of the DCCC's advertisement). We are well aware of the facts involved in the above-referenced enforcement matters, and to the extent that any Commissioners regard those facts as creating legal boundaries, the American Crossroads advertisement respected those boundaries.

In addition, the B-roll footage was derived exclusively from the b-roll "Tillis Montage 2," and not from any Tillis campaign advertisements. Just as in MUR 6357, "the generic [Tillis] footage is shown only in a portion of the American Crossroads advertisement, which does not repeat the entirety, or even any substantial portion, of the [Tillis] footage," and "the few fleeting images from the [Tillis] footage are incorporated into a communication in which American Crossroads adds its own text, graphics, audio, and narration to create its own message."⁴⁰

B. Tillis Campaign's Alleged Use of Same Footage

At Paragraphs 4(a) and 4(b) of the Complaint, the Complainant asserts that the B-roll footage used in the American Crossroads advertisement also appeared in Speaker Tillis' own campaign ads. We do not know if this assertion is accurate, but if the Tillis campaign used its own B-roll footage in campaign ads, that is irrelevant here. As noted above, American Crossroads obtained the B-roll footage that it used in its advertisement from the "Tillis Montage 2" video found on YouTube. In the enforcement matters referenced above, the Commission has

³⁹ Complaint at ¶ 4.

⁴⁰ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 6357 at 4.

never suggested that B-roll video can never be used by the campaign that filmed it.⁴¹ Rather, the Commission's analysis has focused only on whether the "background video footage" is used in a manner that "cop[ies] and convey[s] a campaign's message," or in a manner that is part of "an expression of its own message."⁴² Stated differently, the common thread in the B-roll cases is that "[t]he silent footage at issue contains no discernible message" – any substance and meaning is provided by the entity that incorporates the footage into its "own message."⁴³ Whether a campaign uses its own B-roll in its own advertisements has no bearing on that question.

**C. Complainant's Unsubstantiated Speculation Regarding Source of
"Other Footage and Images"**

Lastly, the Complainant alleges, "[p]resumably, other footage and images that Respondent uses in its ads also comes from Tillis's own campaign materials."⁴⁴ "Mere speculation" cannot be accepted as true for purposes of the reason to believe finding.⁴⁵ This allegation lacks the specificity required for the Commission to countenance any further investigation. Nevertheless, the allegation is incorrect. Aside from the eight to nine seconds of B-roll footage from "Tillis Montage 2," the remaining video included in the advertisement comes from two other sources. As noted above, the video of Speaker Tillis speaking at a podium comes from public television footage of a January 29, 2013, press conference. All other audio and video was created by American Crossroads.

⁴¹ See Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 8 ("the DCCC and the campaign committee used the same footage differently"); see also MUR 5879, General Counsel's Report #2 at 1 ("The advertisement used video footage of Mitchell that was also used in a separate Mitchell Committee advertisement that aired twenty-four hours later....").

⁴² Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 8, 4.

⁴³ Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen in MUR 5879 at 8, 4; see also Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn in MUR 5996 (Tim Bee) at 3 (noting that "[t]he photograph did not convey any campaign content or message").

⁴⁴ Complaint at ¶ 4(d).

⁴⁵ Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas in MUR 4960 (Clinton) at 2.

IV. Conclusion

The American Crossroads advertisement at issue is no different than the advertisements considered in MURs 5879, 6357, 6617, and 6667. Consistent with those matters, the Complaint in this matter should be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Josefiak', with a long horizontal flourish extending to the right.

Thomas J. Josefiak

Michael Bayes

Counsel to American Crossroads



FEDERAL ELECTION COMMISSION

999 E Street, NW

Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Please use *one* form for each Respondent/Entity/Treasurer

FAX (202) 219-3923

MUR # 6870

NAME OF COUNSEL: Thomas J. Josefiak; Michael Bayes

FIRM: Holtzman Vogel Josefiak PLLC

ADDRESS: 45 North Hill Drive, Suite 100

Warrenton, VA 20186

TELEPHONE- OFFICE (540) 341-8808

FAX (540) 341-8809

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/26/14
Date

Caleb Crosby
Respondent/Agent -Signature

Treasurer
Title(Treasurer/Candidate/Owner)

NAMED RESPONDENT: American Crossroads; Caleb Crosby, Treasurer

MAILING ADDRESS: 1615 L Street, NW, Suite 1230
(Please Print)

Washington, DC 20036

TELEPHONE- HOME ()

BUSINESS ()

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 17 2014

Caleb Crosby, Treasurer
American Crossroads
P.O. Box 34413
Washington, DC 20043

RE: MUR 6870

Dear Mr. Crosby:

The Federal Election Commission received a complaint that indicates American Crossroads and you in your official capacity as treasurer may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 6870. Please refer to this number in all future correspondence.

Under the Act you have the opportunity to demonstrate in writing that no action should be taken against American Crossroads and you in your official capacity as treasurer in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents, records and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Any correspondence sent to the Commission must be addressed as follows:

Mail

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Frankie Hampton, Paralegal
999 E Street, NW
Washington, DC 20436

Email

fhampton@fec.gov

If you have any questions, please contact Frankie Hampton at (202) 694-1650 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jeff S. Jordan
Assistant General Counsel
Complaints Examination &
Legal Administration

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

BEFORE THE
FEDERAL ELECTION COMMISSION

American Democracy Legal Fund
Brad Woodhouse, Treasurer
455 Massachusetts Avenue, NW
Washington, DC 20001

Complainant,

v.

American Crossroads
Caleb Crosby, Treasurer
P.O. Box 34413
Washington, D.C. 20043

Respondent.

COMPLAINT

I hereby file this Complaint with the Federal Election Commission ("FEC") under 2 U.S.C. § 437g(a)(1) against American Crossroads ("Respondent"). American Crossroads has republished video footage taken from U.S. Senate candidate Thom Tillis's campaign materials in its own ads in direct violation of the Federal Election Campaign Act and FEC Regulations.

1. Respondent is registered as an independent-expenditure political committee registered with the FEC that accepts unlimited contributions from some contributors.¹ Accordingly, Respondent is strictly prohibited from making monetary or in-kind contributions of any amount to any federal candidate or political committee.²
2. Thom Tillis is a member of the North Carolina House of Representatives and is a candidate for election to the U.S. Senate. Thom Tillis Committee is Tillis's principal campaign committee for election to the U.S. Senate, which registered with the FEC in June 2013.³ Like all such committees, Thom Tillis Committee is subject to strict source and amount restrictions on the contributions it may accept.

¹ See American Crossroads Amended Statement of Organization, <http://docquery.fec.gov/pdf/365/13940951365/13940951365.pdf>.

² Advisory Opinion 2010-09, Advisory Opinion 2010-11.

³ See <http://docquery.fec.gov/pdf/817/13020252817/13020252817.pdf>.

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2014 SEP 12 AM 11:08

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COUNSEL

SENSITIVE

MUR # 6870

2014 SEP 16 PM 2:11

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SECRETARY

- 15044380424
3. On April 1, Respondent spent \$293,313 to produce and air a television advertisement in support of Tillis.⁴
 4. Respondent's ad is overwhelmingly comprised of video footage that was taken from campaign videos created and owned by the Thom Tillis Committee.⁵
 - a. The video footage in Respondent's ad showing Tillis talking in a suit in an office setting is the same footage that first appeared in Tillis's own ad called "Let's Clean Up Her Mess," posted to Tillis's YouTube account in January 2014.⁶ This video footage also appears in another Tillis campaign video posted to its YouTube account in February 2014 called "Tillis Montage 2."⁷
 - b. The video footage of Tillis talking to three women and a man is the very same footage that first appeared in Tillis's own ad called "Paper Route" that was posted to Tillis's YouTube account in March 2014.⁸
 - c. The footage of Tillis walking and talking on the street that is used throughout Respondent's is the same footage that first appeared in the "Tillis Montage 2" video.
 - d. Presumably, other footage and images that Respondent uses in its ads also comes from Tillis's own campaign materials.
 5. According to FEC regulations, "[t]he financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic or other form of campaign material prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure."⁹
 6. Respondent repeatedly republished segments of Tillis's campaign materials in its ads. Respondent reported to the FEC that it paid \$293,313 to disseminate the Tillis materials. This payment is a contribution to the Thom Tillis Committee under section 109.23.
 7. The maximum contribution Respondent could make to the Thom Tillis Committee is \$5,000 per election. Respondents have therefore made an excessive contribution in violation of 2 USC § 441a(a).

⁴ See <http://docquery.fec.gov/cgi-bin/dcdev/forms/C00487363/914409/se>. See also Greg Sargent, Crossroads Ad: Thom Tillis has the "Conservative Guis" to Replace Obamacare (Apr. 1, 2014), available at <http://www.washingtonpost.com/blogs/plum-line/wp/2014/04/01/crossroads-ad-thom-tillis-has-the-conservative-guis-to-replace-obamacare/>.

⁵ Respondent's TV ad can be viewed at <https://www.youtube.com/watch?v=PEkXpx53Ivc>.

⁶ Tillis's "Let's Clean Up Her Mess" ad can be viewed at <https://www.youtube.com/watch?v=RZgestENqew>. The ad includes a disclaimer stating it was "Paid for by the Tom Tillis Committee. Approved by Thom Tillis."

⁷ The "Tillis Montage 2" video can be viewed at <https://www.youtube.com/watch?v=euuqFHAN7ZQ>.

⁸ The "Paper Route" ad can be viewed at https://www.youtube.com/watch?v=CuQq6V4KV_s. This ad includes a disclaimer stating it was "Paid for by the Tom Tillis Committee. Approved by Thom Tillis."

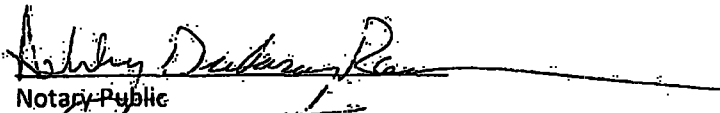
⁹ 11 C.F.R. § 109.23(a).

When American Crossroads paid to distribute the Tillis campaign's material, that payment became an illegal, excessive contribution to Tillis's campaign. These actions are in direct violation of the Federal Election Campaign Act and its safeguards designed to ensure "soft money" is not used to fund campaigns for federal office. I respectfully request the FEC investigate these violations, enjoin American Crossroads from making further violations, and assign the maximum fines permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 8 day of September, 2014.


Notary Public

My Commission Expires:

February 28, 2014

